

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Michael Carlton Lowe, Sr.,

Case No. 18-cv-3414 (NEB/DTS)

Plaintiff,

v.

REPORT AND RECOMMENDATION

Wilco Life Insurance Company,

Defendant.

On January 3, 2019, this Court ordered plaintiff Michael Carlton Lowe, Sr. — a state prisoner — to pay an initial partial filing fee of \$304.87 within 20 days, failing which it would be recommended that this matter be dismissed without prejudice for failure to prosecute. See Docket No. 7 (citing 28 U.S.C. § 1915(b); Fed. R. Civ. P. 41(b)). That deadline has now passed, and Lowe has not yet paid the required initial partial filing fee. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute.¹ See *Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”). The remaining motions submitted by Lowe may be denied as moot in light of his failure to pay the required initial partial filing fee as previously ordered and as mandated by § 1915(b).

¹ As this Court previously noted, even if Lowe had elected to prosecute this action through payment of the required initial partial filing fee, it is overwhelmingly doubtful that the Court has jurisdiction over the action. See Docket No. 7 at 3 n.3.

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein,
IT IS HEREBY RECOMMENDED THAT:

1. This action be DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 41(b) for failure to prosecute.
2. The motion for summary judgment of plaintiff Michael Carlton Lowe, Sr. [Docket No. 9] be DENIED AS MOOT.
3. Lowe's motion to set aside declaration of forfeiture [Docket No. 3] be DENIED AS MOOT.

Dated: February 14, 2019

s/David T. Schultz
DAVID T. SCHULTZ
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. See Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).